

Attorneys for Debtors and Debtors-in-Possession:

Annette W. Jarvis, Utah Bar No. 1649
 RAY QUINNEY & NEBEKER P.C.
 36 South State Street, Suite 1400
 P.O. Box 45385
 Salt Lake City, Utah 84145-0385
 Telephone: (801) 532-1500
 Facsimile: (801) 532-7543
 Email: ajarvis@rqn.com

Lenard E. Schwartzer, Nevada Bar No. 0399
 Jeanette E. McPherson, Nevada Bar No. 5423
 SCHWARTZER & MCPHERSON LAW FIRM
 2850 South Jones Boulevard, Suite 1
 Las Vegas, Nevada 89146-5308
 Telephone: (702) 228-7590
 Facsimile: (702) 892-0122
 E-Mail: bkfilings@s-mlaw.com

Committees:

Frank A. Merola, Esq.
 Eve H. Karasik, Esq.
 Andrew M. Parlen, Esq.
 STUTMAN TREISTER & GLATT, P.C.
 1901 Avenue of the Starts, 12th Floor
 Los Angeles, California 90067
 Telephone: (310) 228-5600
 Facsimile: (310) 228-5788
 Email: ekarasik@stutman.com

Marc A. Levinson, Esq.
 Jeffrey D. Hermann, Esq.
 ORRICK, HERRINGTON &
 SUTCLIFFE LLP
 400 Capitol Mall
 Sacramento, California 95814
 Telephone: (916) 447-9200
 Facsimile: (916) 329-4900
 Email: malevinson@orrick.com

Rob Charles, Esq.
 Susan M. Freeman, Esq.
 LEWIS AND ROCA, LLP
 3993 Howard Hughes Parkway, 6th Floor
 Las Vegas, Nevada 89169
 Telephone: (702) 949-8320
 Facsimile: (702) 949-8321
 Email: RCharles@LRLaw.com

**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

Case Nos. BK-S-06-10725 LBR
 Case Nos. BK-S-06-10726 LBR
 Case Nos. BK-S-06-10727 LBR
 Case Nos. BK-S-06-10728 LBR
 Case Nos. BK-S-06-10729 LBR

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

Chapter 11

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,
 Debtor.

**SECOND JOINT MOTION FOR
 ORDER FOR IMPLEMENTATION
 OF CONFIRMED PLAN (AFFECTS
 ALL DEBTORS)**

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

In re:
USA SECURITIES, LLC,
Debtor.

Date: OST REQUESTED
Time: OST REQUESTED

Affects:

- ☒ All Debtors
- ☐ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA First Trust Deed Fund, LLC

Debtors USA Commercial Mortgage Company ("USACM"), USA Capital First Trust Deed Fund ("FTDF"), USA Capital Diversified Trust Deed Fund, LLC ("DTDF"), USA Capital Realty Advisors, LLC ("USA Realty"), and USA Securities, LLC ("USA Securities") (collectively, the "Debtors"), and the Official Unsecured Creditors' Committee for USA Commercial Mortgage Company ("USACM Committee"), the Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC ("FTDF Committee") and the Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC ("DTDF Committee") (collectively, the "Committees" and collectively with the Debtors, the "Movants"), by and through their counsel and pursuant to Section 1142 of the Bankruptcy Code, Article VIII, Section D of the "Debtors' Third Amended Joint Chapter 11 Plan of Reorganization" ("Plan")¹, and the "Order Confirming the 'Debtors' Third Amended Joint Chapter 11 Plan of Reorganization,' as Modified Herein" ("Confirmation Order"), respectfully request that the Court grant this Motion and enter an order authorizing certain matters related to the implementation of the Plan as set forth below.

This Motion supplements, in part, the "Joint Emergency Motion or Order Related to Implementation of Confirmed Plan" (the "First Joint Motion") [Docket No. 2768] filed by the Movants on February 14, 2007, which was granted by the Court on February 15, 2007 ("First Implementation Order") [Docket No. 2819]. The First Joint Motion sought relief to implement the Plan and the Confirmation Order by requesting an order confirming that USACM will continue to

¹ Unless otherwise stated, all capitalized terms used herein are defined in the confirmed Plan or the Confirmation Order.

1 exist for 60 to 90 days after the Effective Date in order to serve as sublicensee for Compass
 2 Partners, LLC (“Compass”), the acquirer of the FTDF loan portfolio and the USACM servicing
 3 assets. The First Joint Motion was brought on an emergency basis because the relief requested
 4 related to a condition precedent of the Sale (defined below) closing, which had to occur by
 5 February 16, 2006, under the terms of the Plan and the Confirmation Order.

6 This Motion is, in part, a follow-up to the First Joint Motion, as it deals with related issues
 7 with respect to the servicing of loans by the USACM Trust and the Post-Effective Date DTDF.
 8 Additionally, this Motion addresses other issues, detailed herein, that are necessary to properly
 9 implement the Plan, some of which apply globally, and others of which are specific to a particular
 10 Debtor and/or Committee.

11 I. STATEMENT OF FACTS

12 A. Background

13 1. On April 13, 2006 (“Petition Date”), the Debtors filed petitions for relief under
 14 chapter 11 of the Bankruptcy Code. By order entered June 9, 2006, the Court approved the joint
 15 administration of the Debtors’ chapter 11 cases (the “Chapter 11 Cases”). Effective as of the
 16 Petition Date, Mesirow Financial Interim Management, LLC (“Mesirow”) was employed as crisis
 17 manager to the Debtors, and Thomas J. Allison of Mesirow has served as the Debtors’ Chief
 18 Restructuring Officer (“CRO”). The Debtors are represented in the Chapter 11 Cases by Ray
 19 Quinney & Nebeker P.C. (“RQN”) and Schwartzer & McPherson Law Firm (“S&M” and together
 20 with RQN and Mesirow, the “Debtors’ Professionals”).

21 2. The Office of the United States Trustee appointed four official committees in these
 22 cases: (i) the USACM Committee; (ii) the FTDF Committee; (iii) the DTDF Committee; and (iv)
 23 the Official Committee of Holders of Executory Contracts Rights through USA Commercial
 24 Mortgage Company.

25 3. On November 15, 2006, the Debtors filed the Plan. On December 19 and 20, 2006
 26 the Bankruptcy Court held confirmation hearings on the Plan and confirmed the Plan.

27 4. On January 8, 2007, the Court entered the Confirmation Order, confirming the
 28 Plan, including approving certain documents incorporated as part of the Plan, in particular: the

USACM Trust Agreement, the DTDF Amended Operating Agreement, and the Asset Purchase Agreement dated December 8, 2006, with Compass (“Purchase Agreement”).

5. Pursuant to the Purchase Agreement, Compass agreed to purchase substantially all of the assets of the FTDF and certain servicing assets of USACM for \$67 million subject to certain potential purchase price adjustments. On February, 16, 2007, this transaction (the “Sale”) closed. The allocation of \$9.5 million of the sale proceeds between USACM and the FTDF (the “Overbid Allocation”) is currently disputed by the USACM Committee and the FTDF Committee. In addition, as part of the closing negotiations on potential purchase price adjustments, certain sums are held in escrow (the “Escrows”) in order to resolve disputes between Compass and the Sellers, FTDF and USACM. The Escrows were established to facilitate a later determination regarding purchase price adjustments alleged by Compass. Rights to the Escrows under the Purchase Agreement are disputed by Compass, FTDF, the FTDF Committee and USACM (the “Purchase Price Adjustment Determination”), and the allocation of the Escrows once the Purchase Price Adjustment Determination is made is subject to dispute by FTDF Committee and the USACM Committee (the “Purchase Price Adjustment Allocation”).

6. There also exist certain unresolved disputes involving FTDF (collectively, “Disputes”) as follows:

a. disputes between FTDF and USACM related to (i) the unresolved FTDF Unsecured Claim,² (ii) the Overbid Allocation and the Purchase Price Adjustment Allocation, and (iii) the allocation of the Debtors’ Professionals’ fees and expenses incurred after January 31, 2007 (*see* Plan, Art. IV, Section 2.g and 2.h);

² The Plan states:

“**FTDF Unsecured Claim**” means the General Unsecured Claim of FTDF against USACM, excluding the FTDF Unremitted Principal Claim, in the amount a s may be agreed to by the FTDF Committee and the USACM Committee by the date of the commencement of the Confirmation Hearing, and if no agreement is reached by such date, the amount determined by the Court after an evidentiary hearing between such Committees; provided however that the USACM Committee and the FTDF Committee or, after the Effective Date, the USACM Trust and the FTDF may agree at any time as to the amount that represents the FTDF Unsecured Claim without further Court order by Filing a notice of such agreement with the Court; and provided further, however, that prior to the Effective Date, the USACM Committee and the FTDF Committee shall consult the DTDF Committee and the Direct Lender Committee regarding the issue.
Plan, Art I, Section 82.

- b. disputes between FTDF, DTDF and USACM related to the responsibility for BMC Group's fees and expenses as the claims agent;
- c. disputes between FTDF, USACM and Compass related to the Purchase Price Adjustment Determination;
- d. any other disputes that arise between FTDF and Compass related to the Purchase Agreement ("Compass Disputes"); and
- e. any disputes among FTDF and any of the Debtors.

7. Certain orders that this Court has issued in the Chapter 11 Cases have been appealed. Originally, there were three appeals of the Confirmation Order (the "Confirmation Appeals"). One of the Confirmation Appeals, designated as District Court Case No. 07-CV-00138-RCJ-GWF, has been dismissed by the District Court. The remaining two Confirmation Appeals, designated as District Court Case Nos. 07-CV-00160-RCJ-GWF (filed by Debt Acquisition Company of America V, LLC) and 07-CV-00072-RCJ-GWF (filed by various parties self-identified as the "Lenders Protection Group" and the "Jones Vargas Direct Lenders"), are in the process of briefing. Additionally, an appeal has been filed from the Court's "Order Denying Motion for Order Temporarily Allowing the Claim of Del and Ernestine Bunch for Voting Purposes" (the "Bunch Appeal"), and at this time there is at least one appeal from a Order sustaining objections to Claims.

8. As discussed above, on February 15, 2007, after the Confirmation of the Plan, the Court entered the First Implementation Order, which provides:

USACM is authorized to exist after the Effective Date for a period of no more than 90 days for the purpose of acting as subservicer for Compass under USACM's existing mortgage broker license issued by the Mortgage Lending Division of the Department of Business and Industry of the State of Nevada ("MLD"), pending a decision by the MLD on the application of Compass for a mortgage broker license, and to enable Compass to transition to other loan servicing arrangements if its application is denied.

First Implementation Order at 2.

B. Post-Effective Date Status Of The Movants Under The Plan And Confirmation Order

9. The Plan and the Confirmation Order provide as follows with respect to the status of each of the Movants after the Effective Date:

- a. **USACM :**

i. The Plan provides:

USACM shall have authority to take actions on behalf of USACM and the USACM Estate on and after the Effective Date until the date that the USACM Trustee is appointed for the USACM Trust. After the USACM Trust Assets are transferred to the USACM Trust and the USACM Trust becomes effective in accordance with this Plan and the USACM Trust Agreement, USACM shall be dissolved in accordance with the Confirmation Order and applicable state law.

Plan, Art. VIII, Section L.1; *see* Confirmation Order ¶ 69 (“As soon as practicable [after the USACM Trust becomes effective], USACM shall be dissolved in accordance with the Confirmation Order and applicable state law”).

ii. Although this provision suggests that USACM may take actions on behalf of USACM and the USACM Estate until the date that the USACM Trustee is appointed for the USACM Trust, which is anticipated to be on or after the Effective Date, other provisions of the Plan and the Confirmation Order anticipate and, in fact, require that USACM continue to exist for a discrete period of time after the Effective Date and after the appointment of the USACM Trustee to disburse Cash that is not transferred to the USACM Trust (the “Non-Trust Cash”)³ to certain holders of Allowed Claims who are not beneficiaries of the USACM Trust, but rather whose Allowed Claims are paid by USACM pursuant to the Plan--namely, holders of Administrative Expense Claims against USACM, Priority Tax Claims against USACM, and Class A-1 through A-3 Claims (“USACM Non-Trust Claimants”). *See* Plan, Art. II, Sections B and C.1.a-c (discussing treatment of the USACM Non-Trust Claimants); *Id.*, Art. IV, Section A.2 (Non-Trust Cash to be distributed in accordance with the Plan); *Id.*, Art. IV, Section B (all Claims against USACM are retained by the holders of such Claims against USACM); Confirmation Order ¶ 41 (authorizing USACM and its officers to take all actions necessary to implement the Plan and the transactions contemplated thereunder). In fact, the Plan could be read to suggest that until all of these distributions are made by USACM on or after the Effective Date and the remaining assets transferred to the USACM Trust, the Trust does not become effective. *See* Art VIII, Section L.1.

³ The Non-Trust Cash is defined as an exclusion to the definition of “USACM Trust Assets” as “any Cash needed to make the payments required to be made on the Effective Date pursuant to the Plan or needed to fund the reserves required to be established on the Effective Date.” Plan, Art. I, Section 140 (incorporated by reference in USACM Trust Agreement ¶ D); Confirmation Order ¶ 28.

iii. The Confirmation Order states that the USACM Trustee may act as Disbursing Agent for the Non-Trust Cash pursuant to a Disbursing Agent Agreement at the option of USACM. Confirmation Order ¶ 63.

iv. The Confirmation Order further provides that USACM and the USACM Trustee are:

[A]uthorized to take all actions necessary to implement the Plan and the transactions contemplated by therein in accordance with the terms of the Plan, and are authorized to execute, deliver, file or record such contracts, instruments, releases, and other agreements or documents and to take such other actions as they may determine to be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of . . . this Confirmation Order, the Plan, the Plan Documents Supplement, the Direct Lender Supplement, or the exhibits and schedules to any of the foregoing, and any or all such documents shall be accepted by each of the respective local or state filing offices and recorded in accordance with applicable state law and shall become effective in accordance with their terms and the provisions of state law.

Confirmation Order ¶ 41; *see id.* ¶ 65 (Debtors are authorized to execute such documents and take such other action as is necessary to effectuate the Plan without any action by any Equity Interests whatsoever).

b. **The USACM Committee:** The USACM Committee dissolves at such time as the USACM Trustee is appointed and is authorized to act. Plan, Art. VIII, Section K. Pursuant to the Confirmation Order, Geoffrey L. Berman was approved as the USACM Trustee, and, on and after the Effective Date, the USACM Trust and the USACM Trustee have all the powers set forth in the Plan and in the USACM Trust. Confirmation Order ¶ 30. Accordingly, as of the Effective Date, the USACM Committee is disbanded, and its members shall be released and discharged from all rights and duties arising from, or related to, the Chapter 11 Cases. Plan, Art. VIII, Section K.

c. **DTDF:**

i. The Plan provides:

On the Effective Date, Post-Effective Date DTDF shall have the exclusive authority to act on behalf of DTDF and the DTDF estate. When the Plan has been fully implemented by Post-Effective Date DTDF and all assets of the DTDF Estate and Post-Effective Date DTDF have been fully liquidated and distributed and the DTDF Estate and Post-Effective Date DTDF fully administered, DTDF shall be dissolved in accordance with the Confirmation Order, the DTDF Amended Operating Agreement and applicable state law.

Plan, Art. VIII, Section L.2; *see* Confirmation Order ¶¶ 31, 38 & 70.

ii. The Confirmation Order provides that Post-Effective Date DTDF shall act as Disbursing Agent for the DTDF Estate, and may employ or contract with other entities to assist in or perform any distribution of property. Confirmation Order ¶ 63.

iii. The Confirmation Order further provides that DTDF and the DTDF Administrator are:

[A]uthorized to take all actions necessary to implement the Plan and the transactions contemplated by therein in accordance with the terms of the Plan, and are authorized to execute, deliver, file or record such contracts, instruments, releases, and other agreements or documents and to take such other actions as they may determine to be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of . . . this Confirmation Order, the Plan, the Plan Documents Supplement, the Direct Lender Supplement, or the exhibits and schedules to any of the foregoing, and any or all such documents shall be accepted by each of the respective local or state filing offices and recorded in accordance with applicable state law and shall become effective in accordance with their terms and the provisions of state law.

Confirmation Order ¶ 41; *see id.* ¶¶ 65 & 72 (Debtors are authorized to execute such documents and take such other action as is necessary to effectuate the Plan without any action by any Equity Interests whatsoever).

d. **The DTDF Committee:** The DTDF Committee dissolves at such time as the DTDF Administrator is appointed and is authorized to act. Plan, Art. VIII, Section K. Pursuant to the Confirmation Order, Michael Tucker was approved at the DTDF Administrator, and, on and after the Effective Date, the Post-Effective Date DTDF and the DTDF Administrator have all the powers set forth in the Plan and in the DTDF Amended Operating Agreement. Confirmation Order ¶ 31. As of the Effective Date, the DTDF Committee is disbanded, and its members shall be released and discharged from all rights and duties arising from, or related to, the Chapter 11 Cases. Plan, Art. VIII, Section K.

e. **FTDF, USA Realty, and USA Securities:**

i. The Plan provides:

FTDF, USA Realty, and USA Securities shall have the authority to effect all transactions and take all actions required by the Plan on and after the Effective Date. FTDF and the FTDF Committee shall each have authority to prosecute (a) claim objections in the FTDF Estate, and (b) the non assignable FTDF Litigation Claims on behalf of the FTDF subject to the compromise with DTDF set forth

herein. After the actions set forth in this paragraph are completed, FTDF, USA Realty, and USA Securities shall be dissolved in accordance with the Confirmation Order and applicable state law.

Plan, Art. VIII, Section L.3; *see* Confirmation Order ¶ 72.

ii. The Confirmation Order states that as of the Confirmation Date and after the Effective Date, Mr. Allison shall remain the CRO of FTDF, USA Realty and USA Securities. Confirmation Order ¶ 60. Also, FTDF, USA Realty and USA Securities are to act as Disbursing Agents under the Plan for their respective estates and shall make all distributions required under the Plan, unless they elect to enter into a Disbursing Agent Agreement with a third party Disbursing Agent. *Id.* ¶ 61.

iii. The Confirmation Order further provides that FTDF and Mr. Allison as FTDF's CRO are:

[A]uthorized to take all actions necessary to implement the Plan and the transactions contemplated by therein in accordance with the terms of the Plan, and are authorized to execute, deliver, file or record such contracts, instruments, releases, and other agreements or documents and to take such other actions as they may determine to be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of . . . this Confirmation Order, the Plan, the Plan Documents Supplement, the Direct Lender Supplement, or the exhibits and schedules to any of the foregoing, and any or all such documents shall be accepted by each of the respective local or state filing offices and recorded in accordance with applicable state law and shall become effective in accordance with their terms and the provisions of state law.

Confirmation Order ¶ 41; *see id.* ¶ 65 (Debtors are authorized to execute such documents and take such other action as is necessary to effectuate the Plan without any action by any Equity Interests whatsoever).

iv. Finally, the Confirmation Order states:

FTDF, USA Realty, and USA Securities shall have the authority to effect all transactions and take all actions, including, without limitation, filing applicable tax returns, required by the Plan on and after the Effective Date. FTDF and the FTDF Committee shall each have authority to prosecute (a) claim objections in the FTDF Estate, and (b) the nonassignable FTDF Litigation Claims on behalf of FTDF subject to the compromise with DTDF set forth herein. After the actions set forth in this paragraph are completed, FTDF, USA Realty, and USA Securities shall be dissolved in accordance with the Confirmation Order and applicable state law, and FTDF, USA Realty, and USA Securities, or their respective appointed Disbursing Agent, which may be DSI, shall file a final report and close their respective Chapter 11 Cases in accordance with Bankruptcy Code section 350.

1 Confirmation Order ¶ 71.

2 f. **The FTDF Committee:** Pursuant to the Plan, “[t]he FTDF
 3 Committee will dissolve on Effective Date, unless the FTDF Committee is charged with
 4 prosecuting objections to Claims or any of the non-assignable FTDF Litigation Claims on behalf
 5 of the FTDF Estate as provided pursuant to the compromise between DTDF and FTDF.” Plan,
 6 Art. VIII, Section K. The FTDF Committee has filed objections to approximately 160 proofs of
 7 Claim and proofs of interest filed in the FTDF case, many of which have yet to come on for
 8 hearing before the Court. It is highly likely that many of these Claim objections will be
 9 outstanding as of the Effective Date. Additionally, there are other issues respecting Claims
 10 allowance and litigation related to preparing and filing of final fee applications for professionals,
 11 and the Disputes, such as the Overbid Allocation, the Purchase Price Adjustment Determination,
 12 the Purchase Price Adjustment Allocation and the FTDF Unsecured Claim, among others.
 13 Accordingly, the FTDF Committee will not dissolve on the Effective Date.

14 II. MEMORANDUM OF POINTS AND AUTHORITIES

15 10. The Plan provides for an orderly wind down of the Debtors’ affairs after the closing
 16 of the Sale and the Effective Date. However, in order to implement the Plan, the Movants seek an
 17 order of the Court clarifying certain aspects of the wind down process, as forth in further detail
 18 below, such as the payment of the professionals needed to accomplish the wind down, and the
 19 handling of certain issues that may remain outstanding after the Effective Date.

20 11. The Court has authority to grant the relief requested herein pursuant to Section
 21 1142(b) of the Bankruptcy Code, which provides:

22 The court may direct the debtor and any other necessary party to execute or
 23 deliver or to join in the execution or delivery of any instrument required to effect
 24 a transfer of property dealt with by a confirmed plan, and to perform any other
 act, including the satisfaction of any lien, that is necessary for the consummation
 of the plan.

25 11 U.S.C. § 1142(b).

26 12. The relief requested by this Motion does not conflict with the terms of the Plan. As
 27 set forth above, the Plan and Confirmation Order vest the Debtors, or their successors, with
 28 various rights as of and after the Effective Date. The tasks to be administered on behalf of the

Debtors' estates include: (a) USACM, USACM Trust, FTDF, Post-Effective Date DTDF, USA Securities and USA Realty making distributions in accordance with the Plan, and if applicable, establishing reserves required under the Plan, the Confirmation Order or any other order of the Bankruptcy Court; (b) the Debtors, their successors under the Plan or, in the case of FTDF and the FTDF Committee, filing objections, if necessary, to Administrative Expense Claims, Priority Claims and other Claims and proofs of interest filed in their respective Chapter 11 Cases; (c) the commencement and/or prosecution of litigation by the Debtors, their successors under the Plan or, in the case of the nonassignable FTDF Litigation Claims, the FTDF Committee acting on behalf of the FTDF Estate; (d) the defense of any and all appeals, including the Confirmation Appeals and the Bunch Appeal; (e) taking necessary measures to close the Chapter 11 Cases in accordance with Section 350 of the Bankruptcy Code; and (f) winding up and dissolving USACM, the FTDF, the DTDF, USA Securities, and USA Realty in accordance with state law.

13. The relief requested herein is also consistent with the terms of the Confirmation Order, relevant portions of which are quoted above.

III. RELIEF REQUESTED

14. The relief requested by this Motion is set forth below as it applies to each Debtor or successor thereof.

A. USACM

15. USACM must undertake limited functions after the Effective Date, including the following:

a. Assisting in preparing and signing USACM tax returns for 2006 and 2007.

These tasks are expected to be completed KPMG as an ordinary course professional.

b. Distributing the Non-Trust Cash to the USACM Non-Trust Claimants who are holders of Allowed Claims against USACM, unless USACM elects to enter into a Disbursing Agent Agreement, authorizing the USACM Trustee to maintain and distribute the Non-Trust Cash to the USACM Non-Trust Claimants who are holders of Allowed Claims against USACM. At least during the period covered by the First Implementation Order, USACM has determined that it will be more efficient and cost-effective for

USACM, acting through the CRO, to implement the Plan in this regard.

c. Prosecuting objections to proofs of Claims and proofs of interests that USACM anticipates filing prior to the Effective Date, but likely will not be considered by the Court prior to the Effective Date. These objections will relate to Administrative Expense, Priority and/or Secured Claims against USACM which, absent objection, may allow the claimant to a distribution from the Non-Trust Cash on the Effective Date. Furthermore, USACM and the USACM Trust are authorized to review and, if necessary, object to requests for Administrative Expense Claims that are filed prior to or on the Administrative Expense Claim Bar Date.

d. Assisting the USACM Trust, if necessary, so requested by the USACM Trust and agreed to by USACM, in (i) evaluating and objecting to proofs of Claims and/or interests asserted by entities in the USACM case not otherwise part of the USACM Pre-Effective Date Claim Objections, and (ii) in attending to any litigation in which the USACM Trust is involved, including assisting in discovery related to such litigation.

e. Performing other ministerial wind down tasks necessary to close the USACM case and dissolve USACM.

16. To facilitate the funding of the USACM Trust on the Effective Date, USACM is required to determine the amount of the Non-Trust Cash that will be reserved for the payment of Allowed Claims of USACM Non-Trust Claimants and reserved for the payment to the Debtors' Professionals in conjunction with their wind down and dissolution of USACM after the Effective Date. Although only an estimate can be made in light of the pending Administrative Expense Claim Bar Date, USACM will file a statement disclosing the estimated Non-Trust Cash necessary to implement the Plan prior to expiration of the time for objecting to this Motion ("Reserve Disclosure"). Thus, USACM requests that the Court enter an order setting the Non-Trust Cash in the estimated amount. USACM will turn over the excess Non-Trust Cash to the USACM Trust if it is determined that USACM has overestimated the amount of Non-Trust Cash. However, if USACM has underestimated the amount of the Non-Trust Cash, USACM requests that the Court authorize it to request and obtain from the USACM Trust a reimbursement or refund of Cash

1 necessary to pay all Allowed Claims of USACM Non-Trust Claimants and to complete
 2 implementation of the Plan.

3 17. In connection with these services, the Movants request that the Court confirm that
 4 USACM is authorized to continue to exist until these discrete tasks are completed. At the same
 5 time, it is important that the Effective Date of the Plan not be unduly delayed while these
 6 ministerial functions, along with the limited right as the sub-servicer for the Compass loans, are
 7 performed. As such, the Movants contemplate that the confirmed Plan will go effective on or
 8 before the later of March 15, 2007, or 30 days after the dissolution of any stay pending appeal, to
 9 the extent one is entered.

10 18. USACM suggests that a reserve be set aside for the Debtors' Professionals from
 11 which they may be compensated at their customary hourly rates, or any other rate agreed to by the
 12 parties, for services rendered on behalf of USACM as described herein and reimbursed for
 13 expenses. The amount of this reserve will be included in the Reserve Disclosure, and shall be
 14 included in the reserve established by USACM in relation to the Non-Trust Cash. The estimated
 15 reserve amount will be based on services that USACM anticipates that will be necessary for the
 16 Debtors' Professionals to perform the tasks set forth herein. To the extent that the USACM Trust
 17 requests that the Debtors' Professionals provide services other than those described herein, the
 18 Debtors' Professionals will need to be compensated and reimbursed for expenses from the
 19 USACM Trust. The Debtors' Professionals' fees and expenses will be reviewed by the USACM
 20 Trust, and the Bankruptcy Court will resolve any disputes related thereto.

21 **B. The USACM Trust And Post-Effective Date DTDf**

22 19. Loan Collection.

23 a. Nevada state law requires that a mortgage servicing company be licensed,
 24 or exempt from licensing, under NRS § 645B. In addition to the relief sought in the First Joint
 25 Motion (confirming the post-Effective Date existence of USACM so that it can serve as sub-
 26 servicer for Compass pending Compass's licensing process), the Movants request entry of an
 27 order with respect to the Post-Effective Date Entities' compliance with Nevada mortgage servicing
 28

1 laws, to enable them to implement the Plan cost-effectively and thereby maximize distributions to
 2 the creditors and investors.

3 b. Nevada law requires that a company engaged in “collection of payments
 4 and the performance of related services by a third person in connection with a loan secured by a
 5 lien on real property” be licensed as an escrow agent by the MLD. NRS § 645.010(3). There are
 6 certain exceptions to the licensing statutes, including “[a]ny person doing any act under order of
 7 any court.” NRS § 645A.015(4).

8 c. Under the Plan and the Purchase Agreement, the USACM Trust will be
 9 responsible for collecting two loans, if not paid before the Effective Date, *i.e.* the loans secured by
 10 the Marquis Hotel and Placer Vineyards. The Marquis Hotel is the subject of a pending
 11 involuntary bankruptcy case of its owner, USA Investors VI. The Placer Vineyards loans have
 12 matured and may require suit or other enforcement actions. On the Effective Date, there will be
 13 no funds of Lenders relating to these loans in USACM’s possession that would be turned over to
 14 the USACM Trust for holding in any escrow. The USACM Trust will not make loans or take
 15 Lenders’ money for new loans.

16 d. The MLD has confirmed that it will not object to exempting the USACM
 17 Trust from the escrow licensing requirements, under these circumstances, pursuant to an order of
 18 this Court.

19 e. Under the Plan and Purchase Agreement, any and all rights of USACM
 20 under any servicing agreements relating to the following loans are transferred to Post-Effective
 21 Date DTDF on the Effective Date, and Post-Effective Date DTDF will be the servicer of such
 22 loans on and after the Effective Date: (i) 10-90 Inc.; (ii) BySynergy, LLC \$4,434,446; (iii) Colt
 23 CREC Building; (iv) Colt DIV added #1; (v) Colt DIV added #2; (vi) Colt Gateway; (vii) Colt
 24 Second Trust Deed; (viii) EPIC Resorts; (ix) Interstate Commerce Center, LLC; (x) Sheraton
 25 Hotel. On the Effective Date, there will be no funds of Lenders relating to these loans in DTDF’s
 26 possession that would be turned over to Post-Effective Date DTDF for holding in any escrow.
 27 Post-Effective Date DTDF will not make new loans or take Lenders’ money for new loans.
 28

f. The MLD has confirmed that it will not object to exempting Post-Effective Date DTDF from the escrow licensing requirements, under these circumstances, pursuant to an order of this Court.

g. A copy of this Motion has been served on the Deputy Attorney General with responsibility for the MLD with respect to this matter, Mr. Richard Dreitzer.

20. Post-Effective Date Litigation.

a. While USACM needs to continue in existence for the time period needed to accomplish the purposes described in this Motion, the Movants contemplate that, outside of the discrete tasks to be accomplished by USACM during its wind down period, the majority of the legal work to be accomplished after the Effective Date will be handled by only one firm, instead of by counsel for both the Debtors and the Committees. Thus, other than the limited objections to Claims of USACM Non-Trust Claimants or Administrative Expense, Priority or Secured Claims against USACM (which, absent execution of a Disbursing Agent Agreement with the USACM Trustee, will be largely handled by the Debtors' Professionals), prosecution of Claim objections and all other litigation related to USACM, which can include, without limitation, objections to Administrative Expense Claims and the Disputes defined in ¶ 6 *supra*, will be accomplished by the USACM Trust, with the assistance of counsel for the USACM Trust (initially Lewis and Roca LLP) and, to a limited extent as may be requested and agreed upon by the USACM Trustee and the Debtors' Professionals, the Debtors' Professionals.

b. Post-Effective Date DTDF and its counsel will be responsible for objections to proofs of Claim and interest in the DTDF case, and for litigation on behalf of the DTDF Estate as the successor entity with any requested assistance from the Debtors' Professionals as may be agreed upon between the Post-Effective Date DTDF and the Debtors' Professionals. To the extent that the Debtors' Professionals assist Post-Effective Date DTDF as set forth herein, Post-Effective Date DTDF will compensate the Debtors' Professionals at their customary hourly rates, or at such other rates as may be agreed to by the parties, and reimburse the Debtors' Professionals for their expenses.

C. FTDF And The FTDF Committee

21. As set forth above, the Plan provides that FTDF will exist after the Effective Date to affect its wind down and dissolution. Performance of these tasks will include preparing and filing any necessary 2006 and 2007 tax returns on behalf of FTDF, making distributions and maintaining reserves in accordance with the Plan, defending appeals, including the Confirmation Appeals and the Bunch Appeal, objecting to Claims and prosecuting any Compass Disputes in conjunction with the FTDF Committee, closing FTDF's case, and dissolving FTDF under applicable state law. The Debtors' Professionals will be required to provide services to FTDF to accomplish these tasks. In connection with such services, the Movants request that a reserve be set aside for the Debtors' Professionals to compensate them at their customary hourly rates, or any other rate agreed to by the parties, and reimburse them for expenses. The amount of this reserve will be set forth in the Reserve Disclosure. The fees and expenses of the Debtors' Professionals will be reviewed by the FTDF Committee, and the Bankruptcy Court will resolve any disputes related thereto.

22. As set forth above, the Plan states that the FTDF Committee ceases to exist on the Effective Date, unless the FTDF Committee is charged with prosecuting objections to Claims or any of the non-assignable FTDF Litigation Claims on behalf of the FTDF Estate as provided pursuant to the compromise between DTDF and FTDF. The FTDF Committee has filed objections to proofs of Claims and interests filed in the FTDF case and, therefore, as contemplated and expressly provided for under the Plan and the Confirmation Order, the FTDF Committee will continue to exist after the Effective Date for the purpose of prosecuting Claim objections, as well as the non-assignable FTDF Litigation Claims.

23. FTDF maintains that the Disputes discussed *supra* at ¶ 6 are disputes that are within the scope of the FTDF Committee's post-Effective Date existence. To the extent necessary, the FTDF Committee requests that it be expressly charged with prosecuting the Disputes, and in the case of the Compass Disputes assisting FTDF in prosecuting that Dispute, as appropriate. Furthermore, the FTDF Committee requests that it be authorized to assist FTDF in matters related to the wind down and dissolution of FTDF if so requested by FTDF. Consistent with the agreement that was reached prior to the confirmation of the Plan related to intercompany

disputes, it is appropriate that the FTDF Committee be authorized to handle the Disputes as set forth herein on behalf of FTDF. The FTDF Committee seeks authorization to allow the FTDF Committee's Professionals (Stutman, Treister & Glatt, P.C., Shea & Carlyon Ltd., and Alvarez & Marsal LLC) to represent the FTDF Committee in these matters.

24. As with the other Debtors, FTDF as a Plan Proponent has standing to defend the Confirmation Appeals and the Bunch Appeal to the extent that the Appeals relate to FTDF. In order to adequately represent the interests of the FTDF Committee in these Appeals, the FTDF Committee seeks authorization to participate and be heard in FTDF's post-Effective Date defense of the Appeals and allowing the FTDF Committee's Professionals to represent the FTDF Committee in the Appeals (and any other appeals in which the FTDF is or becomes a party).

25. FTDF and the FTDF Committee request that a reserve be set aside to compensate the FTDF Committee's Professionals at their customary hourly rates, or such other rates agreed to by the parties, for services rendered on behalf of the FTDF Committee as described herein and to reimburse expenses. The amount of this reserve will be set forth in the Reserve Disclosure. The fees and expenses of the FTDF Committee's Professionals will be reviewed by FTDF and the FTDF Committee, and the Bankruptcy Court will resolve any disputes related thereto.

D. USA Realty And USA Securities

26. As noted above, the Plan provides that USA Realty and USA Securities wind down and be dissolved after the Effective Date. This process will include performance of the following tasks: prosecuting the Claim objections, preparing and filing any necessary 2006 and 2007 tax returns on behalf of these Debtors, making distributions and maintaining reserves in accordance with the Plan, defending appeals, including the Confirmation Appeals, closing these Debtors' Chapter 11 Cases, and dissolving these Debtors. The Debtors' Professionals will be required to perform services to assist USA Securities and USA Realty with these tasks.

27. To date, the only Administrative Expense Claims, Priority Tax Claims, Secured Tax Claims, Other Secured Claims and Priority Unsecured Claims that have been filed against these Debtors are the Claims of the Debtors' Professionals, the PBGC Claim against USA Realty, and certain prepetition tax obligations. The Movants therefore request that reserves be set for

USA Realty and USA Securities for the payment of holders of Administrative Expense Claims, Priority Claims, and Class D-1, D-2, D-3, E-1, E-2, E-3 Claims that are Allowed Claims.

28. It is not anticipated that USA Realty or USA Securities will have sufficient Cash to pay the Debtors' Professionals for their anticipated services. The Debtors' Professionals agree to receive payment pro rata from any Cash remaining after these Debtors pay Allowed Administrative Expense Claims (other than the Debtors' Professionals fees and expenses), Allowed Priority Claims, and Allowed Class D-1, D-2, D-3, E-1, E-2 and E-3 Claims in accordance with the Plan.

29. Once distributions to holders of such Claims are paid, USA Realty and USA Securities will immediately file a Final Report and seek an order closing these Debtors' Chapter 11 Cases.

E. Clarification Regarding Matters Related To The Effective Date

30. The Plan provides that "[a]ny distribution required to be made on the Effective Date shall be deemed timely if made as soon as practicable after the Effective Date and, in any event, within thirty (30) days after the Effective Date." Plan, Art. VII, Section J. The Debtors request that the Plan be clarified to include within this provision any act that must be taken on the Effective Date, not just distributions. This clarification will take into account the logistics involved in implementing the Plan, thus ensuring that the Plan is properly implemented for the benefit of all of the Debtors' estates, creditors, surviving equity interest holders, and any other parties in interest.

31. The Movants request that the Court enter an order that, notwithstanding any provision of the Plan, the Effective Date of the Plan will be on the later of March 15, 2007 or 30 days after the dissolution any stay pending appeal, to the extent one is entered.

F. Clarification Regarding Representation Of Management

32. On and after the Effective Date, testimony, affidavits or declarations and/or attendance at depositions or Bankruptcy Rule 2004 examinations (any and all being referred to herein as "Testimony") may be required or requested of Mr. Allison, as the CRO of the Debtors, Mesirow or Mesirow employees as the Debtors' crisis manager and financial consultant, and/or

persons employed or retained by the Debtors who have assisted Mr. Allison in his capacity as CRO of the Debtors (“Management”) to assist the Post-Effective Date Entities and/or the FTDF Committee in the implementation of the Plan. To the extent that Testimony is requested or required, Management will require legal assistance from RQN and/or S&M. Accordingly, the Debtors’ Professionals request that the Court authorize Management and the Debtors’ Professionals to be compensated at their customary hourly rates for any fees and reimbursed for expenses related to providing any Testimony required or requested by a Post-Effective Date Entity and/or the FTDF Committee. In this event, the Post-Effective Date Entity (or in the case of requests by the FTDF Committee, FTDF) requesting or requiring such Testimony shall bear the cost of any such fees and expenses, and such fees and expenses shall be reviewed by the relevant Post-Effective Date Entity (or in the case of FTDF, the FTDF Committee), with any disputes being resolved by the Bankruptcy Court. Notwithstanding the foregoing, with respect to all work done by USACM after the Effective Date as subservicer for Compass, such fees and costs shall be borne by Compass in accordance with the “Subservicer Agreement” between USACM and Compass.

SUMMARY OF REQUEST FOR RELIEF

Wherefore, the Movants request that the Court enter an order granting the following relief:

1. Confirming that USACM will continue to exist after the Effective Date, not only for the purpose of acting as sub-servicer for Compass under USACM’s existing license, but also for the purpose of performing the ministerial tasks necessary to wind down and dissolve USACM, including those tasks expressly set forth herein.

2. Authorizing the Debtors’ Professionals’ to provide services to USACM relating to its performance of the ministerial tasks necessary to wind down and dissolve USACM, and authorizing USACM to set a reserve in the amount to be stated in the Reserve Disclosure in anticipation of such services. The Debtors’ Professionals will receive their customary hourly rates, or such other rates agreed to by the parties, for these services and reimbursement of expenses, subject to the review by the USACM Trust, with the Bankruptcy Court resolving any related disputes.

3. Setting the Non-Trust Cash in an amount to be disclosed in the Reserve Disclosure, and authorizing USACM to request additional Cash from the USACM Trust if this amount has been underestimated.

4. Pursuant to NRS § 645A.015(4), authorizing the USACM Trust and Post-Effective Date DTDF to service the specific loans for which responsibility is transferred to them under the Plan, without otherwise complying with Nevada Mortgage Licensing or Escrow Licensing requirements.

5. Authorizing the Debtors' Professionals to provide services to Post-Effective Date DTDF as set forth herein. The Debtors' Professionals will receive their customary hourly rates, or such other rates agreed to by the parties, in connection with these services and reimbursement of expenses, subject to review by the Post-Effective Date DTDF, with the Bankruptcy Court resolving any related disputes.

6. Authorizing the Debtors' Professionals to provide services to FTDF relating to FTDF's wind down and dissolution of FTDF and any other actions as provided for herein or in the Plan, and authorizing FTDF to set a reserve in the amount to be stated in the Reserve Disclosure in anticipation of such services. The Debtors' Professionals will receive their customary hourly rates, or such other rates agreed to by the parties, in connection with these services and reimbursement of expenses, subject to review by the FTDF Committee, with the Bankruptcy Court resolving any related disputes.

7. Confirming that the FTDF Committee will continue to exist after the Effective Date for the purpose of performing the tasks expressly set forth above, and authorizing FTDF to set a reserve in the amount of stated in the Reserve Disclosure in anticipation of services provided by the FTDF Committee's Professionals related thereto. The FTDF Committee's Professionals will receive their customary hourly rates, or such other rates agreed to by the parties, in connection with these services and reimbursement of expenses, subject to review by FTDF and the FTDF Committee, with the Bankruptcy Court resolving any related disputes.

8. Authorizing the Debtors' Professionals to provide services to USA Securities and USA Realty relating to their performance of the ministerial tasks necessary for their wind down,

including those set forth herein.

9. Clarifying that any act required to be taken on the Effective Date, shall be deemed timely if made as soon as practicable after the Effective Date and, in any event, within thirty (30) days after the Effective Date.

10. Ordering that, notwithstanding any provision of the Plan, the Effective Date of the Plan will be on the later of March 15, 2007, or 30 days after the dissolution of any stay pending appeal, to the extent one is entered.

11. Authorizing the Debtors' Professionals and Management to be compensated for providing Testimony to aid in the implementation of the Plan as set forth in ¶ 32 *supra*.

DATED this 22nd day of February, 2007.

/s/ Jeanette E. McPherson

Lenard E. Schwartz

Jeanette E. McPherson

SCHWARTZER & MCPHERSON LAW FIRM

2850 South Jones Blvd., Suite 1

Las Vegas, Nevada 89146

AND

Annette W. Jarvis (Utah Bar No. 1649)

Steven C. Strong (Utah Bar No. 6340)

RAY QUINNEY & NEBEKER P.C.

36 South State Street, 14th Floor

P.O. Box 45385

Salt Lake City, Utah 84145-0385

Attorneys for Debtors and Debtors-in-Possession

By /s/ RC (#006593)

Susan M. Freeman, AZ 4199 (pro hac vice)

Rob Charles, NV 6593

LEWIS AND ROCA LLP

3993 Howard Hughes Parkway, Suite 600

Las Vegas, NV 89169

*Attorneys for Official Unsecured Creditors'
Committee for USA Commercial Mortgage
Company*

By /s/ Eve H. Karasik

Frank A. Merola

Eve H. Karasik

Andrew M. Parlen

STUTMAN TREISTER & GLATT, P.C.

1901 Avenue of the Stars, 12th Floor

Los Angeles, California 90067

*Attorneys for Official Committee of Equity
Security Holders of USA Capital First Trust
Deed Fund, LLC*

SCHWARTZER & MCPHERSON LAW FIRM
2850 South Jones Boulevard, Suite 1
Las Vegas, Nevada 89146-5308
Tel: (702) 228-7590 · Fax: (702) 892-0122

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: /s/ Marc A. Levinson
Marc A. Levinson
Jeffrey D. Hermann
ORRICK, HERRINGTON & SUTCLIFFE LLP
400 Capitol Mall, Suite 3000
Sacramento, California 95814
*Attorneys for Official Committee of Equity
Security Holders of USA Capital Diversified
Trust Deed Fund, LLC*

No Opposition

Gerald M. Gordon
Gregory E. Garman
GORDON & SILVER, LTD.
3960 Howard Hughes Parkway, 9th Floor
Las Vegas, Nevada 89109
*Attorneys for Official Committee of Holders of
Executory Contracts Rights through USA
Commercial Mortgage Company*

Copy of the foregoing motion
served by e-mail and U.S. Mail
February 22, 2007 on:

Richard I. Dreitzer
Deputy Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101-1068
ridreitz@ag.state.nv.us